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Before the  
Federal Communications Commission  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Changes to the Board of  
Directors of the National Exchange  
Carrier Association, Inc.

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CC Docket No. 97-21

COMMENTS

The National Exchange Carrier Association, Inc. (NECA)<sup>1</sup> submits these Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>2</sup>

SUMMARY

The Commission's Notice of Proposed Rulemaking in this proceeding requests comment on rule revisions that would enable NECA to serve as temporary administrator of new universal support mechanisms. In its accompanying Notice of Inquiry, the Commission seeks comment on rule revisions that would allow NECA to make itself a neutral, third party, so as to become eligible to compete with other qualified candidates for permanent administrator of new universal

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<sup>1</sup> NECA is a not-for-profit association, established under FCC rules, that is responsible inter alia for preparation of access charge tariffs on behalf of all telephone companies that do not file separate tariffs, collection and distribution of access charge revenues, the administration of the Commission's Universal Service and Lifeline Assistance programs, and the administration of the interstate Telecommunications Relay Service fund. See 47 C.F.R. §§ 69.603 and .604. See also 47 C.F.R. § 64.604(c)(4)(iii).

<sup>2</sup> Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 97-21, FCC 97-11 (released Jan. 10, 1997) (NPRM/NOI).

service programs.

In these comments, NECA suggests that the Commission should direct it to establish a new subsidiary universal service administration company (USAC), with a balanced board of directors representing all segments of the industry, to serve as temporary administrator of new universal service programs. This approach, which was outlined in a letter sent by NECA to the Commission on January 10, 1997 (the same day the NPRM/NOI was released) will assure “significant, meaningful representation” by non-incumbent LEC interests for purposes of temporary administration of new universal service funding mechanisms. Under NECA’s proposed approach, the USAC entity would be eligible, under the criteria proposed by the Joint Board, to compete for appointment as long term administrator of the Commission’s new universal service programs, and would be divested from NECA when and if it became the successful bidder.

The Commission should also act quickly to appoint NECA temporary administrator and authorize NECA to begin work on the necessary development activities, pursuant to its Commission-approved Cost Manual, so as to assure successful and timely implementation of these critical universal service programs.

## **I. BACKGROUND**

In its November 8, 1996 Recommended Decision in CC Docket No. 96-45,<sup>3</sup> the Federal State Joint Board recommended that NECA be appointed temporary administrator of new

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<sup>3</sup> Federal State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (released Nov. 8, 1996) (Recommended Decision)

universal service support mechanisms. Prior to such interim appointment, however, the Joint Board recommended that the Commission “permit NECA to add significant, meaningful representation” of non-incumbent local exchange carrier (LEC) interests to its Board of Directors.<sup>4</sup> The Joint Board also recommended that the Commission appoint an advisory board to select a “neutral, third-party” as long-term administrator for universal service programs, and that it act to remove any regulatory barriers preventing NECA from rendering itself a neutral, third party so that it would be eligible to compete in the advisory board’s selection process.<sup>5</sup>

The Commission therefore seeks comment in the NPRM phase of this proceeding on rule revisions that would permit NECA to become eligible to serve as temporary administrator of new universal service support mechanisms under consideration in CC Docket No. 96-45.<sup>6</sup> The NPRM tentatively concludes that in order to be eligible to serve as the temporary administrator, NECA’s Board of Directors must become more representative of the telecommunications industry as a whole.<sup>7</sup> The NPRM seeks specific comment on an October 18, 1996 letter sent by NECA to the Commission, which suggested that NECA be permitted to expand its board of directors to add six directors to its existing board representing interests of competitive LECs,

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<sup>4</sup> NPRM/NOI at ¶ 9-10, citing Recommended Decision at ¶¶ 832-33

<sup>5</sup> Recommended Decision at ¶830.

<sup>6</sup> NPRM/NOI at ¶2.

<sup>7</sup> Id. at ¶13. The NPRM proposes to amend section 69.602 of the rules, which establishes NECA governance. Currently, NECA’s board consists of 15 members, two representing large Subset I exchange carriers, two representing mid-size Subset II exchange carriers, six representing small Subset III exchange carriers, and five “independent” directors representing all member exchange carriers and elected by the membership at large. See 47 C.F.R. § 69.602 (b) - (f).

interexchange carriers, wireless carriers, and certain non-carriers, including schools, libraries and rural health care providers, and state interests.<sup>8</sup>

In its accompanying Notice of Inquiry, the Commission seeks comment on rule revisions that would remove any regulatory barriers preventing NECA from making itself a neutral, third party, so that it may compete on an equal footing with other qualified entities for selection as permanent administrator of the Commission's universal service programs.<sup>9</sup> The NOI references four eligibility criteria suggested by the Joint Board: that the permanent administrator, including its Board of Directors, must (1) be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission.<sup>10</sup>

## **II. NECA'S JANUARY 10, 1997 LETTER**

On January 10, 1997, the same day on which the NPRM/NOI was adopted and released, NECA sent a second letter to Chairman Hundt regarding NECA board composition and

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<sup>8</sup> Id., citing Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, October 18, 1996 (NECA October 18, 1996 Letter).

<sup>9</sup> Id. at ¶14.

<sup>10</sup> The NOI also seeks comment on whether the Commission should streamline or even repeal the NECA governance rules, so as to enable NECA to change the composition of its Board without unnecessary regulatory oversight, and on whether the Commission should change other Part 69 rules relating to the administration of the Common Line and Traffic Sensitive access charge pools, so as to permit other parties to participate in a competitive bidding process for those functions. Id. at ¶17.

corporate structure.<sup>11</sup> NECA's January 10, 1997 letter explained that, despite efforts to develop governance proposals to satisfy the varying concerns expressed by participants in CC Docket No. 96-45 (including the proposals contained in NECA's October 18, 1996 Letter), it did not appear possible to do so within the context of a single administrative organization.

Accordingly, the January 10, 1997 letter outlined a new proposal, one designed to satisfy concerns both for interim and long-term universal service administration. Specifically, NECA's January 10, 1997 Letter proposed that, immediately upon being appointed as temporary administrator of the Commission's new universal service programs, and upon being authorized to commit resources to such activities, NECA would establish a wholly-owned subsidiary, a universal service administrative company (USAC), to temporarily administer the programs. The proposed USAC would have a balanced, representative board that would be based on Commission recommendations and would include some representation from the NECA Board. As described in the letter, the USAC would have full control over administration of these programs. Necessary NECA personnel would be dedicated to the USAC, and support services would be obtained from NECA on a charge back basis pursuant to NECA's Commission-approved cost allocation manual.

NECA's January 10, 1997 Letter explains that the USAC would also participate in any bidding process to select a permanent administrator. When and if selected as the permanent

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<sup>11</sup> Letter of Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, January 10, 1997 (NECA January 10, 1997 Letter). Copies of NECA's January 10, 1997 Letter were served on all parties participating in CC Docket 96-45, and a copy was filed ex parte in this proceeding on January 17, 1997. An additional copy is attached as Exhibit A.

administrator of the new Universal Service Fund, USAC would be divested from NECA and would administer federal universal support programs, including the High Cost, Low Income, Schools, Libraries and Rural Health Care Providers and Telecommunications Relay Service Programs. The USAC entity could be established under Commission rule, as the Commission saw fit. It would be a non-stock corporation and would have no membership. Its board of directors could be further enhanced based on recommendations or appointments by the Commission.<sup>12</sup> Under this approach, NECA would no longer have any responsibility for universal service administration, but would continue to file and defend the access charge tariffs and administer the pooling revenue distribution process, essentially as it does today. NECA would also continue to ensure compliance with the Commission's rules.

### **III. DISCUSSION**

A. The Commission Should Direct NECA to Establish a Subsidiary Universal Service Administration Company (USAC) to Serve as Temporary Administrator of New Universal Service Programs.

NECA recommends that the Commission direct NECA to establish a subsidiary universal service administration company (USAC) to serve, initially, as temporary administrator of new

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<sup>12</sup> NECA's January 10, 1997 Letter proposed that necessary NECA personnel and resources to administer the universal service programs would be transferred to USAC upon its selection as permanent administrator. The Letter also suggested that the USAC entity could share support services, such as human resources and information systems, with NECA on a contractual basis in order to take advantage of existing organizational efficiencies. Maintenance of such relationships, at least for the short term, is critical to assuring that both NECA and USAC would have the necessary support capabilities, and would avoid needless expense. To the extent that such contractual arrangements are proposed to continue for purposes of long-term administration, they would be described in full in USAC's proposal, and could be considered by the Commission in assessing USAC's overall qualifications to serve as long-term administrator.

universal service programs and to participate in the bidding process for long-term universal service program administration functions. As stated in NECA's January 10, 1997 letter, these structural solutions would be "an effective way to meet Joint Board and Commission objectives for sound, efficient, impartial and rapid implementation of universal service programs under the Telecommunications Act of 1996."<sup>13</sup>

Establishment of a USAC entity, as outlined in the NECA January 10, 1997 Letter, will address the concerns expressed by commenters in CC Docket 96-45 regarding NECA's administration of new universal service programs. First, the proposal assures "significant, meaningful representation" in universal service administrative processes, as determined by the Commission. The proposal facilitates timely and efficient appointment of a temporary administrator for new universal service programs, and also creates a mechanism for satisfying the goals of the Commission's Notice of Inquiry, in that it would create an organization that could be eligible to compete in the bidding process for a long-term administrator.

NECA does not take any specific positions on the size or composition of the USAC subsidiary board, except to recommend that the Commission clearly establish, by rule or order, a reasonable size for the board and clear criteria and methods for selecting representatives from a cross-section of the telecommunications industry. The inclusion of representatives from the NECA board, who have experience with NECA operations and the complexities of managing universal service funding mechanisms, would assure operational continuity. USAC board members could be appointed by the Commission, nominated by interested parties, or selected by

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<sup>13</sup> NECA January 10, 1997 Letter at 2.

NECA based on recommendations of the Commission and/or interested parties.<sup>14</sup>

B. The Commission Should Act Soon to Appoint NECA (through its USAC subsidiary) Temporary Administrator of New Universal Service Programs.

In its Recommended Decision, the Joint Board underscored the need for rapid action by the Commission if universal service support is to be made available to schools, libraries and rural health care providers on a timely basis. Indeed, it appears the Joint Board contemplated that discount programs for schools and libraries, at least, should become operational by mid-1997, *less than six months from now*.

Recently, representatives of the national telephone associations wrote to the Commission urging prompt action on the Joint Board's request.<sup>15</sup> These associations point out that the Joint Board recommended an "ambitious" program to implement section 254(h) of the Telecommunications Act, involving a great number of new participants in universal service funding, and coordination of the telecommunications carrier industry with the diverse needs and budget processes of the nation's schools and libraries. According to the associations, "there is a

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<sup>14</sup> Section 64.604(c)(4)(iii)(H) of the Commission's rules governs the establishment of the Telecommunications Relay Service Advisory Committee. That provision directed NECA, as TRS administrator, to establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, TRS providers, and state relay administrators, with each group responsible for selecting its own representative to the committee.

<sup>15</sup> Letter of the Michael E. Brunner, National Telephone Cooperative Association (NTCA), John F. O'Neal, National Rural Telephone Association (NRTA), John Rose, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and Roy Neel, United States Telephone Association (USTA), to Reed E. Hundt, Chairman, FCC (January 7, 1997).



long way to go and a short time to get there.”<sup>16</sup>

NECA agrees. Under the best circumstances, implementation of a major funding program -- such as the \$2.25 billion fund contemplated by the Joint Board -- requires substantial effort and time. As an organization that is dedicated to administering universal service programs, NECA will be able to “hit the ground running,” thereby assuring that the programs will be operational on schedule. NECA has established data bases and billing relationships with contributing carriers, and can quickly establish a web site for posting of requests for proposals.

But, as the associations point out, the contemplated program involves many entities that are new to universal service funding mechanisms. Substantial amounts of data may need to be gathered and verified. NECA is fully capable of accomplishing these tasks, but establishing lines of communication with interested parties, understanding their needs, and developing workable administrative mechanisms will take some time.

NECA is eager to begin this developmental work, but is unable to do so absent Commission authorization and some direction from the Commission with respect to administrative cost accounting and cost recovery. It is essential that the Commission act soon to appoint NECA temporary administrator of new universal service programs. Concurrently, the Commission should direct NECA to establish the USAC subsidiary described in its January 10, 1997 Letter, specify parameters for USAC’s governance (as discussed above), and specify cost

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<sup>16</sup> See also Letter of Doug Doughty, Deputy Chairman, Wyoming Public Service Commission, to Reed E. Hundt, Chairman, FCC (January 14, 1997) (“enthusiastically” supporting the associations’ January 7, 1997 letter and stating that “it is critical that NECA be empowered to begin the tremendously detailed work required to implement this portion of the universal service fund.”).

recovery procedures.<sup>17</sup> By doing so quickly, the Commission can help assure successful and timely implementation of its new universal service programs.

#### IV. CONCLUSION

The Commission should direct NECA to establish a subsidiary universal service administration company to serve as temporary administrator of new universal service programs. This approach, as outlined in NECA's January 10, 1997 Letter, will satisfy the Joint Board's criteria for a "significant, meaningful representation" by non-incumbent LEC interests for purposes of temporary administration of the new universal service funding mechanism, and puts in place a structure that will enable the USAC entity to compete for appointment as long term administrator of the Commission's new universal service programs. The Commission should also act quickly to appoint NECA temporary administrator and authorize NECA to begin work on the necessary development activities, pursuant to its Commission-approved Cost Manual, so as to assure successful and timely implementation of these critical universal service programs.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, Inc.

By: 

Richard A. Askoff  
Its Attorney

January 27, 1997

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<sup>17</sup> NECA would expect to keep separate account of costs of administering new universal service mechanisms, pursuant to NECA's Commission-approved cost manual, and recover those expenditures from initial fund collections. See January 10, 1997 Letter at 1.



100 South Jefferson Road  
Whippany, New Jersey 07981  
201/884-8100

Bruce W. Baldwin  
President

January 10, 1997

Reed E. Hundt, Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-45 on Universal Service

Dear Chairman Hundt:

I last wrote you on October 18, 1996 to propose interim changes in governance of the National Exchange Carrier Association, Inc. (NECA), to broaden support for NECA's appointment as interim administrator of the new universal service programs to be established by the Commission. Since that time, the Federal-State Joint Board on Universal Service has issued its recommendation, comments have been filed on the recommendation and NECA has continued discussions with interested parties. In these discussions NECA has tried to develop governance proposals that will satisfy the varying concerns that have been expressed. It is becoming apparent, however, that it may not be possible to do so within the context of a single administrative organization. I would like to share with you our current view of the changes NECA will need to make to meet the Joint Board criteria, initially, for temporary administrator and eventually for permanent administrator, as a neutral third-party.

The Joint Board recommended that NECA be appointed temporary administrator for the Schools, Libraries and Rural Health Care Providers Program. To provide for expeditious implementation of this program NECA proposes that, immediately upon being appointed as temporary administrator and being authorized to commit resources, it would establish a wholly-owned subsidiary, a universal service administrative company (USAC), to administer the program. The USAC would have a balanced, representative board that would be based on Commission recommendations and would include some representation from the NECA Board. The USAC would have full control over administration of these programs. Necessary NECA personnel would be dedicated to the USAC and support services would be obtained from NECA on a chargeback basis pursuant to NECA's Commission-approved cost allocation manual. The USAC would participate in any bidding process to select a permanent administrator.

Reed E. Hundt  
Page 2  
January 10, 1997

When and if selected as the permanent administrator of the new Universal Service Fund, USAC would be divested from its affiliation with NECA and would administer federal universal support programs, including the High Cost, Low Income, Schools, Libraries and Rural Health Care Providers and Telecommunications Relay Service Programs. The divested company could be established under Commission rule, as the Commission saw fit. It would be a non-stock corporation and would have no membership. Its board of directors could be further enhanced based on recommendations or appointments by the Commission.

Operationally, necessary NECA personnel and resources to administer the universal service programs would be transferred to the divested USAC upon its selection as permanent administrator. NECA anticipates sharing support services, such as human resources and information systems on a contractual basis between NECA and USAC for some period of time in order to take advantage of existing organizational efficiencies. NECA would no longer have any responsibility for universal service administration, but would continue to file and defend the access charge tariffs and administer the pooling revenue distribution process, essentially as it does today.

I believe the structures outlined above would be an effective way to meet Joint Board and Commission objectives for sound, efficient, impartial and rapid implementation of universal service programs under the Telecommunications Act of 1996. In the coming weeks NECA plans to meet with interested parties to discuss this approach and seek their ideas and suggestions.

Sincerely,


A handwritten signature in cursive script that reads "Bruce Baldwin".

Bruce W. Baldwin

cc: FCC Commissioner Susan Ness  
FCC Commissioner Rachelle Chong  
FCC Commissioner James Quello  
State Members, Federal-State Joint Board CC Docket 96-45  
Chief of the Common Carrier Bureau, Regina Keeney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was served this 27th day of January, 1997,  
by hand delivery to the persons listed below.

By   
Perry Goldschein

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